IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20493 of 2005
To
SPECIAL CIVIL APPLICATION No. 20503 of 2005
WITH
CIVIL APPLICATION No. 12917 of 2005
IN
SPECIAL CIVIL APPLICATION No. 20493 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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FARZANA ALLAHRAKHA MALEK & 1 - Petitioners
Versus
JAMBUSAR NAGARPALIKA & 7 - Respondents

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Appearance :
MR SH SANJANWALA, SENIOR ADVOCATE WITH MR RS SANJANWALA WITH MR DILIP L. KANOJIA for Petitioners.
RULE SERVED BY DS for Respondent(s) : 1 - 3.
MR RA PATEL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 28/12/2006
COMMON ORAL JUDGMENT

1. This group of 10 petitions is filed against the order of the learned Presiding Officer, Fast Track Court No. 7, Bharuch on 30.09.2005 in Misc. Civil (Delay) Application Nos. 160 to 170 of 2005 whereby all applications preferred by the present petitioners were rejected on the grounds that the applicants have miserably failed to show sufficient and bonafide reasons for condonation of delay.

2. This Court has issued notice on 10.10.2005. At the time of issuance of notice, this Court has passed an order that without entering into the merits of the present petitions, the petitioner of each petition at present shall pay 100% amount in compliance of their alleged liability fixed subject to the contentions

of the petitioners in the present petitions, to the concerned Municipal Authority and Municipal Authority / Chief Officer of Jambusar Nagarpalika shall see that the amount paid by the petitioners is accepted at the earliest and on the day on which it is tendered either in cash or by Bank Draft, an appropriate receipts in lieu thereof may be passed. The Court, however, further observed that if any of the petitioners intends to contest the Municipal election of Jambusar Nagarpalika, he / she can produce copy of the receipt issued by Municipal authority with the respective nomination form so that Returning Authority can consider the fact of payment of amount by the petitioner concerned.

3. Mr. R.A. Patel, learned advocate appearing for the respondent – Nagarpalika has submitted that out of 13 petitioners in group of these 10 petitions, only four persons have made the payment and one person has contested the election. From the order dated 10.10.2005, it appears that the direction with regard to payment of 100% was issued by this Court

keeping in mind the ensuing election. It was not, however, by way of a condition precedent to entertain these petitions.

4. This Court has thereafter issued Rule on 27.01.2005 and granted interim relief in terms of paragraph 9 (d) of the petition whereby implementation, operation and enforcement of the orders dated 29.12.2001 / 16.04.2002 were stayed. The granting of stay makes it clear that deposit of the amount was not condition precedent to entertain the petitions.

5. It is the case of the petitioners that the petitioners were elected as Municipal Councilors of Jambusar Nagarpalika and during the course of discharge of their duties, certain decisions were taken and resolutions were passed by the Nagarpalika which came to be the subject matter of proceedings under Sections 37 & 70 of the Gujarat Municipalities Act, 1963 for which notices were issued to the petitioners on 17.04.1999. By an order dated 29.12.2001, the Director of Municipalities, Gandhinagar dropped the

proceedings under Section 37 of the Act but held the petitioners responsible for the financial loss to the Nagarpalika and decided to issue separate notices under Section 70 of the Act.

6. Consequently, some of the petitioners filed Special Civil Application No. 8548 of 2002 which came to be dismissed for default by order dated 02.12.2002. The Director of Municipalities, thereafter passed an order on 16.04.2002 whereby it was directed to file Darkhast before the Collector, Bharuch. The Collector, Bharuch was directed to follow procedure under Section 70 (3) of the Act for recovery. He was directed to submit the report. The Chief Officer, Jambusar Nagarpalika also by letter dated 03.01.2004 directed the Collector, Bharuch to follow the procedure for recovery under Section 70 (3) of the Act. On 12.01.2004, notices were issued by the Chief Officer which were challenged by filing Special Civil Application Nos. 2709 to 2726 of 2004 . By an order dated 08.03.2004, this Court after recording that the petitioners of the said petition have

alternative remedy of appeal under Section 70 (4) of the Act, permitted the petitioners to withdraw the petition for the purpose of availing the said alternative remedy. While disposing of the petition, this Court further observed that while considering the question of delay in filing the petition, the District Court shall look into the fact with regard to filing of the present petitions and pendency of these petitions before this Court.

7. Pursuant to the said order, the petitioners filed Misc. Civil Application Nos. 160 to 170 of 2005 before the District Court, Bharuch for condonation of delay in filing the appeal / application under Section 70 (4) for challenging the order passed in exercise of powers conferred under Section 70 of the Act. The said applications were rejected by the learned Presiding Officer, Fast Track Court No. 7, Bharuch for the reasons assigned by him in the impugned order and being aggrieved by the said order, the present petitions have been filed by the petitioners invoking the extraordinary writ jurisdiction of this

Court.

8. Mr. S. H. Sanjanwala, learned Senior advocate appearing for the petitioners in all these petitions has submitted that the petitioners have acted all throughout as per the legal advise given to them from time to time. They were not well conversant with law and tend to rely on the legal advise which was given to them from time to time. The petitioners have earlier approached this Court by filing Special Civil Application No. 2709 of 2004 to 2726 of 2004 on the basis of the legal advise received by the petitioners. Even after the said petitions were disposed of , the petitioners had approached the local advocate for the purpose of filing of appeal accompanied by an application for condonation of delay and the petitioners bonafide believed that the matter is being pursued only to realize at a later stage that the presentation of the appeal as well as the application for condonation of delay were further delayed. The petitioners have bonafide pursued the proceedings and the delay on the part of the

petitioners was not wilful or deliberate. By delaying the proceedings, the petitioners have not derived any benefit. Delay in initiating proceedings has also not caused any prejudice to the respondents. The consequences of the impugned order are drastic and far reaching and as such, the validity and legality of the said orders are required to be decided in accordance with law. He has, therefore, submitted that delay in filing the appeals / applications under Section 70 (4) of the Act was required to be condoned and the appeals were required to be decided on merits.

9. In support of his submission that the learned District Judge has power to condone the delay, Mr. Sanjanwala relied on the decision of the Hon'ble Supreme Court in the case of **Mukri Gopalan V/s. Cheppilat Puthanpurayil Aboobacker, (1995) 5 S.C.C. 5**. He has also relied on the decision of the Hon'ble Supreme Court in the case of **State of Nagaland V/s. Lipok AO and Others, JT 2005 (4)**

SC 10 for the proposition that Section 5 of the Limitation Act has to be construed liberally so as to do substantial justice to the parties.

10. Mr. R.A. Patel, learned advocate appearing for the respondent – Nagarpalika, on the other hand, has submitted that the present petitions filed by the petitioners have no merit and they are not tenable at law on the three main preliminary points; (i) That the petitioners have not clarified as to how the delay applications before the District Court are maintainable. The petitioners have filed proceedings before the Court as an original proceeding, and not an appeal or revision against any impugned order. The provision of Section 5 of the Limitation Act would, therefore, not applicable and the delay cannot be condoned. (ii) In a proceeding under Section 70 (4) of the Act, the District Judge working as *Personna-Designata was* deciding the matter as per the special power under the Municipalities Act. The District Judge was not working as the Civil Judge

in the matter. In this view of the matter, the Judge deciding the matter has no power to condone delay.

(iii) The legislator by the provision under Section 70 (4) of the Act has given special power to the District Judge to conduct the matter but has not made any provision for application of Section 5 of the Limitation Act in Section 70 or any sub-section of Section 70 of the Act. In this view of the matter, the application for condoning the delay cannot be entertained.

11. Over and above this, Mr. Patel has further submitted that the petitioners have not explained as to what are the reasons for not preferring the application in time. The petitioners have neither shown sufficient reason nor shown any ground which prevented the petitioners from approaching the Court as mentioned in the provisions of Section 5 of the Limitation Act. The petitioners have filed the present petitions and the proceedings only with a view to contest the Municipal elections without paying the municipal dues. As per provisions of

Section 11 of the Act, no person contests the Municipal election, who is in due of any types of Municipal dues like municipal funds, taxes, levy or any type of penalty under the Act. The petitioners are in due of the municipal amount as penalty and, therefore, the proceedings were initiated against them before the Director of Municipalities, Gandhinagar who by his orders in different proceedings in groups of the applications directed the Collector to recover the due amounts from the respective petitioners under Section 70 (4) of the Act. He has, therefore, submitted that the learned District Judge has rightly rejected the application for condonation of delay and this Court while exercising its power under Article 227 of the Constitution of India should not entertain these petitions.

12. After having heard learned advocates appearing for the respective parties and after having gone through the impugned orders as well as the contents of the petitions and the reply filed on behalf of the Nagarpalika, the Court is of the view that the

grounds raised in opposing these petitions are not sustainable. It is true that under Section 70 (4) of the Act, the word appeal is not mentioned. However, Section 5 of the Limitation Act lays down that any appeal or application other than the application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. A plain reading of Section 5 makes it clear that the applications moved by the present petitioners before the District Court are not applications within the meaning of Order XXI of the CPC. They have challenged the order passed by the Director of Municipalities under Section 70 of the Act. Those applications, therefore, cannot be said to be original applications. Simply because Section 70 (4) refers to taking of evidence do not mean that the said applications are original applications. In view of the decision of the Hon'ble Supreme Court in the

case of **Mukri Gopalan V/s. Cheppilat Puthanpurayil Aboobacker, (SUPRA**, the Director of Municipalities cannot be considered to be *Personna-Designata.* The Hon'ble Supreme Court in the context of Rent Act has observed that the Appellate Authority constituted under Section 18 of the Kerala Rent Act, 1965 functions as a Court and the period of limitation prescribed therein under Section 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 to 24 of the Limitation Act, 1963. Such proceeding will attract Section 29 (2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals would be condoned on sufficient cause being made out by the applicant concerned for the delay in filing such appeals. These observations are squarely applicable to the issue involved in the present petitions. While considering

the applications under Section 70 (4) of the Act, the District Court is a Court and vested with the powers under Section 5 of the Limitation Act and all the provisions contained in the Limitation Act are required to be applied while deciding the question of condonation of delay.

13. This Court while disposing of Special Civil Application Nos. 2709 to 2726 of 2004 has specifically observed that if the petitioners have approached this Court and have spent some time in prosecuting their remedy before this Court, while considering the delay, the District Court shall look into the fact with regard to filing of the present petitions and pendency of these petitions before this Court. It appears that this aspect was totally lost sight of by the District Judge while rejecting the delay condonation applications. Till 08.03.2004, the petitioners have been pursuing their remedy by way of filing petitions before this Court and hence, till this date, the delay is considered to have been properly explained by the petitioners. It is true that

from 08.03.2004, till the applications filed before the District Court i.e. on 24.06.2005, there is delay is of about 15 months. However, the same has also been explained by the petitioners while moving the said applications before the District Court and even in the present petitions also, they have tried to justify the said delay. While considering the question regarding condonation of delay, the Hon'ble Supreme Court has observed in the case of **State of Nagaland V/s. Lipok AO and Others** (SUPRA) that Section 5 of the Limitation Act is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause recorded in the peculiar circumstances of the case is sufficient. The Court further observed that the expression “sufficient cause” should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of

sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. Keeping these observations of the Hon'ble Supreme Court in mind, this Court is of the view that the learned District Judge should have condoned the delay by taking pragmatic and liberal approach in the matter.

14. In the above view of the matter and in light of the settled principles of law and taking liberal approach which the Courts have consistently taken while considering Section 5 of the Limitation Act, I hereby allow these petitions by quashing and setting aside the impugned order dated 30.09.2005 passed by the learned Presiding Officer, Fast Track Court No. 7, Bharuch in Misc. Civil (Delay) Application Nos. 160 to 170 of 2005. However, because of the delay caused by the present petitioners in preferring the

applications before the District Court late, the respondent – Nagarpalika has to incur expenses. I hereby impose the cost of Rs.500/- (Rupees Five Hundred Only) per petitioner which shall be deposited before the District Court where the applications against the order under Section 70 (4) are now pending. I leave the question regarding payment of penalty or any part thereof open for the discretion of the learned District Judge whether to deposit or not before entertaining the appeal on merits.

15. Subject to the aforesaid observations and directions, all these petitions are accordingly allowed. Rule is made absolute.

16. In view of the order passed in these petitions, Civil Application No. 12917 of 2005 does not survive and is accordingly disposed of.

[K.A. PUJ, J.]

Savariya